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November 18, 1994

BURTON W. OLIVER
Executive Director

Ms. K--- H---
P--- H--- S---, Inc.
XXX N. --- Blvd., Suite X
---o, CA XXXXX-XXXX

No Permit

Dear Ms. H---:

This is in reply to your letter of October 7, 1994 regarding your inquiry of the consequences of changing your billing practices for repairs from the separate billing of the sale price of parts and labor to a lump sum, or, as you have called it, a "flat price", for repairs to heaters and/or air conditioners.

You have stated that, in all instances, your purchases of repair parts are made on a tax-paid basis. Further, you have been reporting as gross sales the full price, including mark-up, separately charged by you to your customers. Because of competitive circumstances, you now wish to change your method of billing to "flat price" and wish to know the proper method for reporting the sale of parts installed by you in repairs.

We note that your business includes repair or installation of parts into air-conditioners and heating units which are installed as fixtures into real property. Thus, you qualify as a construction contractor as defined in Sales and Use Tax Regulation (Regulation) 1521(a)(B)(2). We will limit our analysis to the specific area of your concern, that being the taxable treatment of parts installed by you in repairs dependant upon manner of billing.

Air conditioning and heating units are fixtures. (Regulation 1521 Appendix B.) Contracts to repair fixtures are contracts for the sale and installation of parts when the sale price of the parts is billed separately from the repair labor in which instance sales tax applies to the sale price of the parts. We assume that you have been reporting sales tax on your separately stated sales price for the parts furnished when performing repairs. It is also assumed that having

reported those sales in that fashion, you took, as a deduction, the purchase price of the parts to you. This in consideration of the fact that you were purchasing those parts on a tax-paid basis and reselling them without making any other use in accordance with Regulation 1701(a).

When a contractor enters into a lump-sum (flat price) contract to repair a fixture, either in place or one that he or she is required to reattach to the realty, that contractor is the consumer of the parts used. (Regulation 1521(c)(6).) As a consumer, the sale of parts to you, or the use of the parts by the contractor is subject to tax. No sales or use tax applies to the contractor's lump sum charges for the repair. Therefore, if you contract for a lump sum (flat price), you do not owe sales tax on your charges and may not collect an amount itemized as "sales tax," "sales tax reimbursement," etc. The sale of the parts to you would be subject to tax.

Very truly yours,

Anthony I. Picciano
Staff Counsel

AIP:wk